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October 27, 2025

VIA CM/ECF

The Honorable Jarrett B. Perlow
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Suite 401
Washington, D.C. 20439

Re: *Apple Inc. v. Squires*, Appeal No. 24-1864, Notice of Supplemental Authority

Dear Mr. Perlow:

PTAAARMIGAN appears in this case as an *amicus*, not as a party. PTAAARMIGAN requests leave to draw the Court's attention to supplemental authority, PTAAARMIGAN's *amicus* brief from *In re: Cambridge Industries USA Inc.*, No. 26-101, ECF 18-2 (Oct 24, 2025).

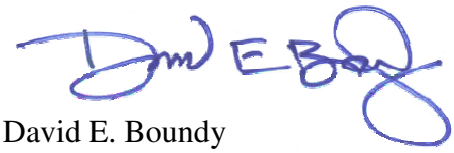
Taken together, PTAAARMIGAN's briefs in this case and in *Cambridge* suggest a middle ground between the parties' all-or-nothing extremes. This case and *Cambridge* are similar in many respects. In both, subregulatory guidelines purport to limit IPR/PGR institution. In both, an IPR petitioner challenges those guidelines. PTAAARMIGAN's *Cambridge* brief explains differences that should flip the outcome. In this case, PTAAARMIGAN urges (ECF 57) that the 2020 *NHK*/*Fintiv* guidance is proper exercise of authority—but just barely. In counterbalance, PTAAARMIGAN's *Cambridge* brief urges that 2025 guidance is arbitrary, capricious, and not in accordance with law.

PTAAARMIGAN's *Cambridge* brief highlights a direct clash between this Court's decision in *Apple Inc. v. Vidal*, 63 F.4th 1 (Fed. Cir. 2023) against two Supreme Court cases, *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667 (1986) and *Lindahl v. OPM*, 470 U.S. 768 (1985). In both *Bowen* and *Lindahl*, the Supreme Court applied the presumption of judicial review to interpret preclusion-of-review statutes. Preclusion statutes are to be read narrowly, limited to their literal terms, precluding only the "determination" itself, while allowing review of *underlying methods and rules*. Contrariwise, in *Apple*, this Court read § 314(d) broadly. PTAAARMIGAN's *Cambridge* brief suggests a narrow reading of *Apple* that reconciles *Bowen* and *Lindahl*.

PTAAARMIGAN's *Cambridge* brief will assist the Court in scoping § 314(d) so it does not become a blank check for arbitrary and capricious malexercise of the Director's discretion. The brief amplifies the proper boundaries of agencies' use of guidance, and assists the Court in avoiding a circuit split with the D.C. Circuit. "General statements of policy" such as *NHK*/*Fintiv* are valid (and not subject to facial review) when promulgated (*contra* Apple's position in this

case), but become reviewable as *Bowen* underlying issues *when and as applied*. (In contrast, rules in mandatory terms are unlawful if issued without legislative rulemaking procedure, and are facially reviewable when promulgated.) PTAAARMIGAN's *Cambridge* brief highlights several *Bowen*/*Cuozzo* "method" shenanigans in the Director's 2025 guidance that violate limits on guidance, and explains how *Bowen*, *Lindahl*, and *Cuozzo* preserve this Court's power to police those limits. The Court's decision in this case should preserve those powers and limits.

Respectfully submitted,



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